

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

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| Schools and Libraries Universal Service |) | |
| Support Mechanism |) | CC Docket No. 02-6 |
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**Comments of NASTD The Association for Telecommunications and Technology
Professionals Serving State Government**

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Pursuant to Section 1.51(c) of the Commission's rules, the Association for Telecommunications and Technology Professionals Serving State Government (NASTD) hereby submits these comments in response to the Commission's Second Report and Further Notice of Proposed Rule Making, CC Docket 02-6, FCC 03-101 (released April 29, 2003) ("FNPRM").

NASTD is a professional organization whose purpose is to advance and promote the effective use of telecommunications technology and services to improve the operation of state government. NASTD represents telecommunications and technology professionals from the 50 states, and the private sector. State members provide and manage state government communications services and facilities for state agencies and other public entities, often including hospitals, prisons, K-12 public schools and libraries, colleges and universities. These members also play a strategic role in planning and shaping their states' communications infrastructures and policies. Corporate members provide communications technology, services and equipment to state government.

NASTD was founded in 1978 and has been an affiliate of The Council of State Governments (CSG) since 1980, with its headquarters in Lexington, Kentucky.

Most states, through legislative acts, established organizations for the procurement, oversight and management of telecommunications resources to meet the needs of state government. Each state agency or organization serves multiple government entities that include other state agencies, county and local governments, public health agencies, public schools and public libraries.

In order to serve their various customers, the state telecommunications organizations procure a myriad of telecommunications services and hardware components from multiple service and equipment vendors; and bundle the components into service offerings through State Telecommunications Networks (STNs). The services offered include local and long distance voice communications, video transmissions, dedicated and shared data networks, wireless voice and data services, Internet access and premises wiring, technical planning and engineering, and other similar services. Most of these services are connected by or use bandwidth or transmission capability of the state telecommunications network. State network planning and procurement support the Commission's goal of "technology neutral" telecommunications services.

In many states STNs play a key role in providing lowest cost services to schools and libraries. Participation by these entities, as with other political subdivisions of the state, in the STN is fundamentally voluntary; though depending on the individual state law the STN can be obligated to provide services to any such requesting entity. In some states, use of STN services by schools and libraries is mandatory. State programs or initiatives may encourage use of the STN by schools and libraries, but even when no other incentive exists, and where STNs are available, many schools and libraries choose to participate because of the significant cost savings they can realize.

The pricing advantages available to schools and libraries through STNs further leverage a primary objective of providing access to advanced services for eligible entities under Sec. 254(h) of the Telecommunications Act of 1996. The Commission recognized this by adopting mechanisms allowing the prices of services available through STNs to serve as pre-discount prices that eligible schools and libraries may use to calculate their discounts under the funding mechanism adopted in the Commission's May 8, 1997 Report and Order in CC Docket 96-45.

Following the May 8 Report and Order, NASTD argued in several filings before the Commission that, in addition to STN pricing being eligible for discounts, STNs themselves should be eligible for direct reimbursement from the Commission's Universal Service Fund. NASTD argued that the cost and administrative efficiencies available through STNs cannot be fully realized under the Universal Service Fund structure unless there is a clarification or modification to permit STNs to reflect Universal Service discounts in the rates charged to their school and library members and then apply directly to the Universal Service Fund for reimbursement. NASTD reiterates this conclusion in the comments below. In further support of this conclusion and request, NASTD respectfully requests that the Commission consider state statutory requirements and responsibilities of the STNs, the administrative cost savings to telecommunications providers and other service providers achieved by STNs, and the administrative efficiencies that SLD may achieve by effecting program changes urged by NASTD.¹

STNs provide schools and libraries with local and long distance voice telecommunications services and various forms of video and data transmission services. These services are frequently provided to the end user through bundled components purchases from multiple service and equipment vendors. Under the definition of "telecommunications services" the Commission has adopted, STNs are eligible to receive discounts from telecommunications carriers on the portions of these services STNs provide to eligible schools and libraries; however, STNs currently are not able to receive reimbursement directly from the Universal Service funding mechanism. Some of the costs incurred by STNs in providing services to schools and libraries are not directly attributable to readily identifiable costs of components that STNs purchase from service and equipment vendors. For example, in order to support their operations, STNs generally must, by state law, allocate costs of the aggregated services they provide, along with a small administrative charge to cover costs of the STN employees, contract administration and other related operating expenses among all the government entities (including schools and libraries) on their network. To the extent that these administrative costs are not reimbursable under the Commission's rules, the ability of STNs to continue serving as cost-efficient providers of aggregated services to schools and libraries may be jeopardized. (Is it worth mentioning that one reason the STN's can obtain better rates from their suppliers is that the structure of the STN and the nature of the STN's contracts minimizes the suppliers' own administrative costs, which would otherwise be borne in the customer's rates? I.e. when customers cannot use the STN, some of the services' administrative costs are in effect shifted into the higher rates

paid, so the presence of administrative costs in STN rates actually represents a lower net administrative cost burden on the FUSF.)

¹ Reply Comments of NASTD in the matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Request for Comments.

NASTD supports the Commission's efforts to date to implement access to advanced services for schools and libraries under Universal Service support mechanisms. NASTD members will work with SLD and the Commission to ensure that the administrative and cost efficiencies of STNs continue to be available to eligible schools and libraries under the Commission's rules. NASTD and its members thank the Commission for its consideration.

Second Order Issues

Eligible Services

Educational Purpose

NASTD applauds the FCC's decision to clarify the definition of "educational purpose." We believe that this will simplify the application process, a goal that is heartily supported by NASTD.

Duplicative Services

NASTD seeks clarification of the discussion presented in paragraphs 22 et seq. concerning *Funding of Duplicative Services*. The discussion centers on waste, fraud and abuse through duplication of Priority Two requests. NASTD supports efforts to identify duplicative services in Priority Two requests.

There is a question as to whether "duplicative service" determinations are made prospectively (e.g., based solely upon applications) or upon delivery (e.g., based on a complete record). Since duplicative services are defined as "services that deliver the same functionality to the same population in the same location during the same time period," a final determination cannot be made until services are installed and delivered. NASTD urges the FCC to encourage the SLD to make the determination at the service delivery phase and not prospectively at the application phase. Further, NASTD urges the SLD to ensure there are reviewers who are trained on the intricacies of state networks, in order to facilitate these decisions.

The statement "...it is not cost effective for applicants to seek discounts to fund the delivery of duplicative services" is overly broad. The major issues affecting proper determination of duplication are the application cycle timing as it relates to the states'

procurement process, the states' need for redundant technologies, and the need to recognize states' applications to accomplish network upgrades and technology transitions.

Application Cycle Timing and Procurement Processes

The established Form 471 application filing window drives all applicants to file at least 6 months in advance of the earliest delivery of service and sometimes up to 24 months in advance of receipt of services. Therefore applicants must forecast their needs based on budget projections, perceived technology needs and state-driven procurement cycles. It is commonplace for state network applications to reflect seemingly duplicative services, in that the application must cover all potential eventualities, in order to ensure that the selected solution is covered and eligible for funding. An application may be filed that requests both fiber and copper circuits; until the budget on the state level is finally resolved (which may not occur until the service delivery period has already begun), there can be no selection of the technology. Once the budget is finalized, the state network will then select one technology, based on available state funding and what reflects the most cost effective and efficient service delivery solution for the state. Given the lag in timing between the application filing period and funding decisions, NASTD wonders how the SLD can make decisions about duplicative services during the application phase, rather than after final funding decisions have been made and services are actually delivered.

The FCC, in the December 1997 *Fourth Order on Reconsideration*, recognized the important role that state networks play in aggregating service requests and driving down the prediscout costs for such services. In furthering this, priority should be given to the review of state applications. Upon a positive funding decision, individual applicants can cancel any pending duplicative funding requests during PIA review, ensuring that there is more timely notice to the SLD of funds that are available for redistribution.

Additionally, state networks can be involved in situations where an individual school district applies for Priority One services that seem to duplicate the services requested by the state network. The SLD cannot determine whether the services provide the same functionality to the same population, in the same location during the same period, until those services have been delivered. In such a case, how will the SLD make a decision as to which application not to fund?

Need for Redundant Technologies and Migration Issues

There are situations where the state network has applied for Priority One services as a consortium and such application includes different technologies. While on the surface it may appear that these services could be duplicative, the application must be filed this

way in order to preserve options for the states. The states have to show effective stewardship of public resources, independent of the E-rate. It is up to the states to make the determination of the most efficient and cost effective method for providing the requested services, which can vary by end site. This often entails redundant technologies to accomplish load balancing, (data) traffic management and reliability.

The appearance of duplicative services may occur when technology upgrades are planned. Network migrations involve technologies (and contracts) that are meant to overlap for a period of time (to allow for an in-place testing of the new technology, for example, or to allow time for an entire state network to be switched over). To not allow this kind of scenario would unfairly penalize states that are engaged in large scale upgrade or migration situations. We urge the FCC to clarify that these situations do not fall within the definition of duplicative services.

Wireless Services

NASTD applauds the FCC's decision to make explicit the goal of supporting telecommunications in a technology-neutral way. We believe that this will simplify the application process, which not only benefits the applicants, but also makes review easier for the Administrator. Additionally, this type of explicit support makes it easier for outsiders to understand the goals of the E-rate program and how the FCC is working to implement them.

NASTD does raise the question, however, whether the statement "Accordingly, basic telephone service, which includes mobile and fixed wireless service, is eligible for discounts..." is meant to be restrictive. That is, has the eligibility of wireless solutions that provide telecommunications beyond "basic telephone service" been changed by this Order?

Voice Mail

NASTD applauds the FCC's decision to include voice mail as an eligible service.

Codification of 30 Percent Policy

While NASTD agrees that the 30% policy needs to be in rules, NASTD is concerned with the way that the rule is being interpreted by SLD. It appears that SLD is now using the 30% rule to deny applications where the available documentation supports 70% or less of the original request. This seems to be a new, more restrictive interpretation of the policy. Previously SLD would work to reconcile that inconsistency and reduce the FRN if necessary. The SLD is now denying the entire FRN; this has the unintended consequence of denying eligible services for which there is supporting documentation.

It should be noted, however, that NASTD would support denial in the case that the 30% was violated because the applicant either requested services it could not prove it was going to use, or the services contained 30% or more of ineligible components.

Choice and Timing of Payment Method

NASTD supports the FCC's decision to make the choice of discount methodology (either discounted bills or reimbursement through the BEAR form) solely the applicants', where such choice is available. This allows the applicant to determine which method of discounting most appropriately meets their budget and administrative needs.

Appeal Procedure

Deadline Extension

NASTD supports the FCC's decision to permanently extend the filing deadlines for appeals to 60 days from the date of the original decision. This will greatly help applicants prepare the necessary documentation. We also applaud the decision to use the postmark for appeals, as for other E-rate actions, to bring more consistency to the program.

Docket Number Change

NASTD supports the use of the new docket, FCC 02-6.

Funding of Successful Appeals

NASTD supports the FCC's decision to make explicit the goal of funding applications that are successfully appealed to the same extent as they would have been funded in the first instance. This brings equity to all applicants, especially those who must sometimes wait for over a year to bring an appeal to a successful conclusion. This also brings predictability to the funding decisions of the Administrator, which helps both applicants and their service providers in determining how to budget for future projects.

Suspension and Debarment

State procurement agencies and/or state networks may not have the ability under local law or regulation to act upon suspension or debarment determinations by the FCC under existing contracts or agreements. While we support the principles expressed in the Second Order, we must raise equity concerns with these determinations. It seems logically possible for a suspension or debarment to arise based on waste, fraud and abuse matters in one jurisdiction, but have no foundation in another. If this occurs, the second jurisdiction may not have a legal ability to act on debarment by terminating a contract or agreement with a service provider absent causation in the second jurisdiction. There are concerns about the mechanism by which such debarment would be effected by the second jurisdiction and the different requirements governing such mechanisms.

Therefore, NASTD supports inclusion of contract terms allowing suspension or termination of a local agreement when E-rate matters result in suspension or debarment by the FCC, as appropriate. This may only be accomplished at the time existing contracts are replaced or amended. Additionally, the FCC's debarment may not indemnify an applicant against claims of the debarred vendor, resulting in greater budgetary hardships for the applicant.

NASTD therefore suggests that if a suspension or debarment is put into action by the FCC, the Commission shall provide notice to all applicants that such action has occurred and will provide an opportunity for affected applicants to take necessary steps in accordance with local procurement laws and regulations to retain their E-rate participation (such as change vendors, terminate or amend contracts, etc.).

Given the concerns stated above and working within those constraints, NASTD supports the extension of suspension and debarment to applicants, service providers, and others (such as consultants) who willfully or repeatedly fail to comply with program rules.

FNPRM Issues

Utilization of Unused Funds

NASTD supports using unused funds as originally proposed in the First Order, beginning with the second quarter 2003, rather than waiting until Funding Year 2004 to begin this vital procedure.

Technology Plan

NASTD supports the proposed rule change that would allow applicants to indicate that their technology plan will be approved by an authorized body by the time the supported services begin. However, as representatives of state networks, NASTD points out that state networks serve as billed entities (but not eligible entities) and therefore, the state networks are under no obligation to provide a technology plan for the purpose of the E-rate program. We also point out that state networks do prepare plans detailing their technology deployment for a variety of reasons, but such plans are outside the scope of the E-rate program.

Computerized Eligible Services List

NASTD supports a computerized list of eligible products and services in the internal connections category, as a pilot project. NASTD sees the availability of such a list as another step, along with the clarification to the definition of educational purposes, to make the application process easier.

NASTD is concerned, however, with the following:

- How such a list will interfere with state decisions as to how/when/what to procure?
- How applicants will indicate cost allocations or conditions on eligibility (such as use or location)?
- How such a list will drive individual applicant procurement decisions?
- The timing of availability of such list (will it be available at the time the Forms 470 are filed?)
- The extent to which the list is used as a "safe harbor" (will eligibility be supported in the application phase, the review phase, the invoice phase and through eventual audits?)
- How will the list be updated, to address obsolete products, upgrades, and new products?

As to expanding the list to telecommunications services and Internet access, NASTD does not think that such a list will foster competition beyond the robust procurement processes the states already have in place. There is concern about geographic differences in product names and service offerings and whether the list can capture such differences.

While it appears that a computerized list of eligible products and services would offer value to the E-rate process, at this point there isn't sufficient information or clarity about the proposal, to fully respond to the questions posed by the Commission.

Other Measures to Prevent Waste, Fraud, and Abuse

NASTD urges the SLD to consider treating state network applications as a special category, so that the efforts engaged in by the entities responsible for such applications are recognized. This will allow review decisions to be made on a priority basis (recognizing the financial impact to the members of such statewide networks), which can also cut down on the number of individual applicants who try to "game the system" by applying separately for exactly the same services, on the theory that the individual applicant will receive a funding commitment sooner than the state.

Further, the SLD should recognize the many procedures that states have in place to prevent waste, fraud, and abuse. Such procedures exist to protect the states' interests, which extend beyond the E-rate program. These include: creating master contracts, which are subject to a rigorous (and easily auditable, by both state and federal auditors) competitive procurement process; suspension, debarment or contract termination as permitted; providing training to applicants on the acceptable (and unacceptable) practices that service providers and applicants can follow; and creating a technology platform for the state (which can not only drive costs down – based on volume purchases, but which can also eliminate some of the "goldplating" that exists when applicants purchase far more technology than they can reasonably use) and offer a more uniform opportunity for implementing advanced telecom services across the state.

Long recognized for their discounted bulk purchasing power, states' master contracts also ensure compliance with state and local procurement rules. Reasonable accommodation of these arrangements would serve to streamline the review, compliance and audit by implementing a "life of contract" approach. Once the state network contract review was complete, subsequent reviewers would have ready access to information on all applications filed against these contracts. Typically the state master contracts endure a long procurement cycle and offer services over a longer multi-year term, spanning multiple program years. This approach could be expanded to include a multi-year application process that could further streamline the process and relieve administrative burdens from all aspects of the program.

Adoption of Governmentwide Regulations

NASTD has no comment.

Debarring willful or repeated violators

NASTD supports the proposal not to debar persons who make inadvertent mistakes. We further support the proposal to separate “intent” from the proposed definition of willful, ensuring that actions other than fraud can be addressed.

Determination of violation resulting in debarment

NASTD supports addressing willful or repeated violations (as those are proposed to be defined) by giving the SLD as much flexibility as possible to ensure such violations are addressed as quickly as possible.

Notification procedures for debarment

NASTD has no comment on these proposals, because they are internal Commission procedures.

Other grounds for debarment

NASTD proposes that any debarment must be related to acts that result in fraud, waste or abuse in the E-rate program.

Imputation for debarment

NASTD offers that many states have addressed imputation in their procurement regulations and statutes. These may serve as guidance to the Commission as it determines how to proceed on imputation.

Effect of debarment

NASTD is concerned that extending debarment from one service category (such as internet access) to another (such as telecommunications) may have the unintended consequence of penalizing innocent applicants who have only one available provider. Similarly, NASTD has concerns about the economic impacts on applicants and beneficiaries of extending the prohibition of participation to other universal service support mechanisms.

Changing service providers post-debarment

NASTD supports the idea that people should be held accountable for their actions. NASTD supports the proposal to allow SPIN changes for applicants whose service provider has been debarred before the SLD has made a funding commitment decision. However, NASTD urges the FCC and SLD to recognize that there may be additional procurement steps that need to be taken in order to comply with state and local processes, meaning that more time may have to be extended to the applicant in order to assure such compliance. NASTD is also concerned about the SLD’s ability to identify applicants who may be complicit in service provider actions. NASTD supports the Commission in its desire not to create incentives for applicants to undermine the goals of the program. Finally, NASTD is compelled to point out that there is no real need to allow SPIN changes after the last date to submit an invoice has passed, acknowledging that deadline extension requests that are filed in a timely fashion are considered and have the effect of providing more time for the new service provider to submit invoices.

